

**APR 25 2007****REMARKS**

Claims 11 – 14, 19 – 20, 22, 23, 27 – 29, and 55 – 63 remain in the present application. Claims 1 – 10, 15 – 18, 21, 24 - 26, 30 – 54, and 64 are cancelled.

The Examiner states that the interference of claims 55 – 63 has not been initiated as claims 55 – 63 are not patentable. It is respectfully submitted that these claims are patentable for at least the reasons set forth below, whereby an interference should now be initiated.

Allowance of claims 11 – 14, 19 – 20, 22, 23, 27 – 29 is hereby recognized and appreciated.

Claims 55 – 57, 60, and 63 stand rejected as being allegedly anticipated by Yamamoto et al.

Claim 55 recites, in part, “elastomeric material mounted within said channels, said elastomeric material being dimensioned so that, when said elastomeric material is compressed, said elastomeric material lies flush with said ribs and exerts substantially uniform pressure across each of said top surface and said bottom surface of said single sheet”. The Examiner states that “the elastomeric material being compressed to lie flush with the ribs and exert substantially uniform pressure across each of the top and bottom surfaces, is considered an inherent property of the gasket taught by Yamamoto”, with reference to figure 2 of Yamamoto et al. This is simply not true. Applicants fail to appreciate how “the elastomeric material being compressed to lie flush with the ribs” is in any way whatsoever possible in the gasket taught by Yamamoto et al. When the gasket of figure 2 of Yamamoto et al. is compressed, the material designated 2 will always lie above every surface of the material designated 1. Claim 55 requires that “said elastomeric material being dimensioned so that, when said elastomeric material is

compressed, said elastomeric material lies flush with said ribs". In order for the elastomeric material to lie flush with the ribs it cannot extend above the ribs (when compressed), and most certainly cannot lie over or on top of the ribs. The single sheet of electrically-conductive material recited in claim 55 has the surfaces thereto exposed to facilitate electrical communication. Yamamoto et al. never exposes the surfaces of the metal sheet 1, see figures 1 ~ 4 and 7 thereof. Further, see column 3, lines 34 – 37 of Yamamoto et al., where it states that, "the sheet gasket [is] prepared by laminating the above-mentioned blend on both sides of the various thin metal sheets". This facilitation of electrical communication is why the recited pressure pad of claim 11 is for an electrochemical cell, where the facilitation of electrical communication is achieved by threading the elastomeric member thereby leaving the surfaces exposed.

In response to this position, the Examiner states:

....Specifically, when the material of Yamamoto is compressed, the elastomeric material will always lie above every surface of the material. This argument is not persuasive. First, although the claims require that the elastomeric material lies flush with the ribs, this limitation does not preclude the elastomeric material from extending above the ribs. In other words, the term "flush" does not appear to require a flat surface. However, assuming arguendo that "flush" requires a flat surface, the limitations in the claim are conditional. The claim language does not require compression of the conductive material, because the language is optional. In accordance with MPEP 2106, language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. Therefore, "flush" does not limit the scope of the claim."

However, the term "flush" does require "a continuous plane", see for example, Webster's New Collegiate Dictionary and others. According, the term "flush" would require a flat surface, using the Examiner's words. The Examiner does acknowledge that Yamamoto et al. fails to teach such, but then alleges that this limitation is conditional and as such does not limit the scope of the claim (citing MPEP 2106). MPEP 2106 does state that "[l]anguage that suggest or makes optional but does not require steps to be performed or does not limit a claim to particular structure does not limit the scope of a claim or claim language.", emphasis in original. The present claim language does "limit a claim to particular structure", and, therefore, does limit the scope of the claim. More

specifically, "said elastomeric material being dimensioned so that, when said elastomeric material is compressed, said elastomeric material lies flush with said ribs" is a structural limitation. It is the dimension of the elastomeric material that is define as one that allow the elastomeric material to lie flush with the ribs when compressed. The claim language at issue does not itself require the compression, as also stated by the Examiner; rather it simply used to define a physical dimension. In view of the foregoing, "flush" does limit the scope of the claim, and such is not taught nor suggested by Yamamoto et al. (as discussed above).

For at least the foregoing reasons, claim 55 and claims 56, 57, 60, and 63, which are dependent therefrom, patentably define over Yamamoto et al. Therefore, reconsideration and allowance of claims 55 – 57, 60, and 63 stand rejected as being allegedly unpatentable over Yamamoto et al.

Claim 61 stands rejected as being allegedly unpatentable over Yamamoto et al. in view of Leonida et al. Claim 61 depends from claim 55, which should now be allowable for at least the reasons set forth above. Accordingly, claim should now be allowable as depending from what should now be an allowable independent claim. Therefore, reconsideration and allowance of claim 61 is respectfully requested.

Claims 58, and 59 stand rejected as being allegedly unpatentable over Yamamoto et al. in view of Furuse et al. Claims 58 and 59 depend from claim 55, which should now be allowable for at least the reasons set forth above. Accordingly, claims 20, 28, 58, and 59 should now be allowable as depending from what should now be allowable independent claims. Therefore, reconsideration and allowance of claims 58, and 59 are respectfully requested.

Claim 62 stands rejected as being allegedly unpatentable over Yamamoto et al.. Claim 62 depends from claim 55, which should now be allowable for at least the reasons set forth above. Accordingly, 62 should now be allowable as depending from what should now be allowable independent claims. Therefore, reconsideration and allowance of claim 62 are respectfully requested.

Accordingly, as the cited references in the Office Action neither anticipate nor render obvious that which the applicant deems to be the invention, it is respectfully requested that claims 11 – 14, 19 – 20, 22, 23, 27 – 29, and 55 – 63 be passed to issue.

It is believed that the foregoing remarks fully comply with the Office Action. If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicants' attorney.

Respectfully submitted,

MOITER ET AL.

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